

CHAPTER 69-02-09 TRADE SECRET PROCEDURES

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69-02-09-01. Application to protect information. An applicant requesting trade secret protection in an administrative proceeding shall file an application with the commission. The application must include at least the following:

1. A general description of the nature of the information sought to be protected;
2. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
3. An explanation of why the information is not readily ascertainable by proper means by other persons;
4. A general description of the persons or entities that would obtain economic value from disclosure or use of the information;
5. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
6. A description of the efforts used to maintain the secrecy of the information.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-02. Filing of application. The application must be addressed to and filed with the executive secretary of the commission. The trade secret material

must be separately bound and placed in a sealed envelope, or other appropriate, sealed container, which must be labeled: **TRADE SECRET - PRIVATE**. An original and seven copies of the public portion of the application must be filed. Only one copy of the trade secret material must be filed.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-03. Processing the application. When an application for trade secret protection is filed, the commission staff shall examine the information and application and make a prima facie recommendation of whether the information is relevant and a trade secret under the definition of trade secret in North Dakota Century Code section 47-25.1-01. The commission will make a determination on the application from the application and the recommendation.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-04. Protective order. Upon a determination that information is relevant and trade secret, the commission shall issue a protective order limiting disclosure.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-05. Request for hearing - Who may request - Time - Burden of proof.

1. Upon a determination that the information is relevant but not trade secret, or upon a determination of irrelevance, the applicant will be notified and has seven days to request a hearing before the commission, or obtain appropriate injunctive relief from the courts. If no hearing is requested or the commission is not otherwise restrained, the information will become part of the public record without protection. The burden of proof in such a hearing is on the party seeking to prevent disclosure.
2. If any person disagrees with the designation of information as trade secret or with its nondisclosure, the person shall first attempt to informally dispose of the dispute with the party seeking to prevent disclosure. If

the dispute cannot be resolved, any person may request a hearing before the commission to determine the trade secret status.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-06. Request for hearing - Contents. A request for hearing must be in writing. An original and seven copies of the request must be filed with the executive secretary of the commission. The request must identify the reason the information should be disclosed, or not considered trade secret. In any hearing the burden of proof is on the party seeking to prevent disclosure.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-07. Viewing trade secret information.

1. The commission and its staff may view protected information at any time. However, the commission and its staff are bound by the terms of these rules to keep the information confidential. The originator (applicant for trade secret status) may also view the information.
2. Others who wish to view protected information, including experts who are not regular full-time employees of the commission, and opposing counsel and experts, may do so only after written authorization from the commission. The commission may grant authorization when the person wishing to view the information submits a written request that includes all of the following:
 - a. The name and address of the person who will view the information;
 - b. Identification, as specifically as possible, of the information requested;
 - c. A showing of good cause why the information is needed;
 - d. Identification of the purpose of the review;
 - e. Identification of the intended use of the information; and
 - f. An estimate of the time needed for review.

The requesting person shall file an original and seven copies of the written request with the commission and serve it upon the originator at least ten days prior to the time the person desires to view the information.

3. Any person requesting review of the information shall also execute a protective agreement form provided by the commission.
4. The commission shall disclose the information unless the originator shows good cause why disclosure should not be granted. When disclosed, trade secret information may not be removed from commission offices, and may be used only for purposes of the proceeding.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-08. References to trade secret material at hearings. To the extent that reference is made to any trade secret information by a person afforded access to such information during any aspect of the proceeding, the information should be referenced only by its title or its exhibit identification, or in a manner that does not unnecessarily disclose the confidential information. If specific disclosure of the confidential information is necessary during oral testimony or argument, it must be on such prior notice as is feasible and, in any event, on sufficient notice to clear the hearing room of persons not bound by this chapter.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-09. Protection of trade secret information. Any part of the record of a proceeding containing trade secret information, including exhibits and transcript pages, must be protected unless otherwise ordered by the commission. If a commission order requires a finding based on trade secret information, the order must reference the confidential nature of the finding and a separate, confidential document must be prepared to state fully the finding of fact and the trade secret information relied upon to support the finding.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-10. Copies of information used during hearing. Copies of the trade secret information may be made for use during a hearing for persons bound by these rules. If copies are made for hearing purposes, they must be numbered. Upon the completion of the hearing, all copies of the information must be returned to the disclosing party.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-11. Documents certified on appeal. When an order of the commission is appealed and the documents are certified to court, copies must be made of the trade secret information. The copies of trade secret information must be placed in a sealed envelope, or other appropriate, sealed container, and labeled: **"TRADE SECRET - PRIVATE"**. The originals of the trade secret information must be retained in the commission's trade secret file. When the court issues its decision and returns the case record to the commission, the copies of trade secret information must be filed with the originals in the commission's trade secret file.

History: Effective March 1, 1994.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-12. Disposal of trade secret information. When a case containing trade secret information has been closed for one year the commission will dispose the trade secret information by shredding.

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

